Supreme Court, U.S.
FILED

No. 06-1580 MAY 29 2007

OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

CHRISTOPHER JOHN CAMPBELL,

Petitioner

v.

PAUL SULLINS,

Respondent

On Petition for Writ of Certiorari
To The Michigan Supreme Court

PETITION FOR WRIT OF CERTIORARI

ALEXANDER V. LYZOHUB
Counsel of Record
14700 FARMINGTON ROAD, SUITE 101
LIVONIA, MICHIGAN 48154-5434
(734) 427-5555

AMERICAN FINANCIAL PRINTERS • (202) 464-5500

QUESTION PRESENTED FOR REVIEW

Whether Petitioner was denied the equal protection of the law from the State Court's refusal to uniformly enforce its rulings on court rules, thereby resulting in the disparate treatment of petitioner causing severe sanctions to stand.

TABLE OF CONTENTS

	Page
Table of Authorities	iii
Opinions below	1
Jurisdiction	2
Statute and regulations involved	2
Statement	3
Reasons for granting the Petition	5
Conclusion	11
Appendix A	A-1
Appendix B	A-7
Appendix C	A-12
Appendix D	A-13
Appendix E	A-14

TABLE OF AUTHORITIES

Cases:	Page
Abate v. PSC, 173 Mich App 647, 658-659 (1988)	6
American Gas Co v. Costello, 174 Mich App 1 (1989)	4, 7
Bolt v. City of Lansing, 238 Mich App 37, 44 - 45 (2000)	10
Buscaino v. Rhodes, 385 Mich 474, 479-480 (1971)	6
Fieger v. Ferry, 471 F 3d 637, 646 and 651 (6th Cir 2006), *reh den en banc* April 18, 2007	7
Giannetti Bros Construction Co v. City of Pontiac, 175 Mich App 442 (1989)	4, 7
Haliw v. Sterling Heights, 207 Mich App 689 (2003) [Decided August 5, 2003]	4
Haliw v. Sterling Heights, 257 Mich App 689 (2003)	7
Haliw v. Sterling Heights, 471 Mich 700, 711(2005)	4, 5, 7
Hooper v. Bernalillo County Assessor, 472 U.S. 612 (1985)	9

Cases (*continued*): **Page**

Kirchberg v. Feenstra,
450 U.S. 455 (1981)..... 9

Leavitt v. Monaco Coach Corp,
241 Mich App 288, 312 n 4(2000)..... 8

McCrary v. Indiana,
364 U.S. 277 (1960)..... 9

Mullins v. St. Joseph Hospital,
271 Mich App 503 (2006)
[Decided July 11, 2006]..... 10

Plessy v. Ferguson,
163 U.S. 537, 559 (1896) 10

Romer v. Evans,
517 U.S. 620 (1996)..... 8

Supreme Court of Virginia v.
Consumers Union of the United States,
100 S Ct 1967, 1975 (1980)..... 7

Ward v. Siano,
269 Mich App 801 (2006)
[Order entered May 8, 2006]..... 10

Ward v. Siano,
270 Mich App 584 (2006)
[Decided April 13, 2006]..... 10

Ward v. Siano,
272 Mich App 715 (2006)
[Decided November 24, 2006]..... 10

Cases (*continued*): **Page**

Ward v. Siano,
Michigan Supreme Court
Docket No. 132797 (Mich 4-4-2007)..... 10

Zobel v. Williams,
457 U.S. 55 (1982)..... 8

Constitutions, statutes and regulations:

US Constitution, Amendment XIV..... 8

MI Constitution 1963
Article 1, Section 2..... 2, 6, 8

MI Const 1963,
Article 6, Sections 5 and 10..... 6

28 U.S.C. 1257(a)..... 2

MCR 2.403..... 3

MCR 2.403(O)(1)..... 3, 4, 5

Michigan's Motor Vehicle
Service and Repair Act,
MCL 357.1301 et. seq..... 3

Miscellaneous:

Dean & Longhofer,
Michigan Court Rules Practice,
Section 2403.22, p 533..... 8

Supreme Court of the United States
OCTOBER TERM, 2007

NO.

CHRISTOPHER JOHN CAMPBELL,

Petitioner

V.

PAUL SULLINS,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE MICHIGAN SUPREME COURT

CHRISTOPHER JOHN CAMPBELL, by and thru his attorneys, petitions for a writ of certiorari to review the Order of the Michigan Supreme Court.

OPINIONS BELOW

The February 27, 2007 Order of the Michigan Supreme Court (App., *infra*, E) is unreported. The October 31, 2006 Order of the Michigan Supreme Court (App., *infra*, D) is unreported. The May 26, 2006 Order of the Michigan Court of Appeals (App., *infra*, C) is unreported. The October 18, 2005 Opinion and Order of the Macomb County Circuit Court (App., *infra*, B) is unreported. And, the June 14, 2004 Opinion and Order of the Macomb County Circuit Court (App., *infra*, A) is likewise unreported.

JURISDICTION

The order of the Michigan Supreme Court was entered on February 27, 2007. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(a).

STATUTES AND REGULATIONS INVOLVED

The Fourteenth Amendment to the United States Constitution prohibits the denial of equal protection of the laws:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof; are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. (emphasis supplied). Section 1.

Similarly, Article 1, Section 2 of Michigan's Constitution (1963) prohibits the denial of equal protection of the laws:

> No personal shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be

> discriminated against in the exercise thereof because of religion, race, color or national origin. The legislature shall implement this section by appropriate legislation. (emphasis supplied).

Also, Michigan has a court rule which provides a method of pre-trial case evaluation and sanctions for rejection in the event an opposing party accepts a proposed mediation award, and the rejecting party does not improve his/her/its mediation amount at trial:

> (1) If a party has rejected an evaluation and the action proceeds to verdict, that party must pay the opposing party's actual costs unless the verdict is more favorable to the rejecting party than the mediation evaluation. MCR 2.403(O)(1).

STATEMENT

Plaintiff initially brought suit against Defendant for fraudulent car repairs in which Defendant charged and received from Plaintiff the amount of $23,665.00. The suit was initiated in a State of Michigan Circuit Court. Theories included violations of Michigan's Motor Vehicle Service and Repair Act (MCL 357.1301 et. seq.), Fraud, Breach of Contract, Unjust Enrichment, and Conversion. MCR 2.403.

Michigan employs a mandatory system for litigants to participate in an attempt to resolve cases before Trial. At the

time, the system was called "Mediation".[1] As a mechanism to encourage settlement thru Mediation, a subpart of the Mediation Rule [MCR 2.403(O)(1)] compelled a losing party to pay the prevailing party their "actual costs" if the losing party did not accept the Mediation Evaluation amount, the prevailing party did accept the amount, and the losing party did not improve his/her/their position from the Mediation Evaluation amount as compared to the verdict.

Plaintiff did not prevail at Trial, and did not prevail on appeal.

On June 14, 2004, the Trial Court awarded Defendant $43,268.75 in appellate attorney fees/costs as against Plaintiff. (Appendix A). The Trial Court relied upon then recent Michigan Court of Appeals decision to award such sanctions. *Haliw v. Sterling Heights*, 207 Mich App 689 (2003) [Decided August 5, 2003]. Prior to August 5, 2003, appellate attorney's fees sanctions was not allowed. *American Gas Co v. Costello*, 174 Mich App 1 (1989), and *Giannetti Bros Construction Co v. City of Pontiac*, 175 Mich App 442 (1989).

On January 25, 2005, the Michigan Supreme Court reversed the *Haliw, supra*, decision, and clarified that the mediation sanctions Court Rule [MCR 2.403(O)] does not apply to appellate attorney's fees. *Haliw v. Sterling Heights*, 471 Mich 700, 711(2005):

---

[1] Please note that this Pre-Trial system to resolve cases has since been named "Case Evaluation".

> We hold that appellate attorney fees and costs are not recoverable as case evaluation sanctions under MCR 2.403(O), accordingly, we reverse the decision of the Court of Appeals and reinstate the trial court's award.

Thus, it was during this window of time of less than eighteen (18) months (August 5, 2003 - January 25, 2005) when the Trial Court awarded this now-illegal appellate attorney fees mediation sanctions.

On June 13, 2005, based on the clarification ruling by the Michigan Supreme Court of January 25, 2005 in *Haliw v. Sterling Heights*, 471 Mich 700, 711 (2005); Plaintiff filed a Motion for Relief from Judgment. Ultimately, on October 18, 2005, the Trial Court denied Plaintiff's Motion. (Appendix B).

Plaintiff then timely appealed thru the Michigan Court of Appeals, and the Michigan Supreme Court - which denied Plaintiff any relief. (Appendix C, D, and E).

REASONS FOR GRANTING THE PETITION

THE STATE COURT'S FAILURE TO BAR PETITIONER'S NOW ILLEGAL APPELLATE ATTORNEY'S FEES MEDIATION SANCTIONS IN LIGHT OF DECLARED PRECEDENT RESULTS IN AN UNCONSTITUTIONAL DENIAL OF EQUAL PROTECTION

The Fourteenth Amendment to the United States Constitution prohibits the denial of equal protection of the

laws:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof; are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. (emphasis supplied). Section 1.

Similarly, Article 1, Section 2 of Michigan's Constitution (1963) prohibits the denial of equal protection of the laws:

> No personal shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color or national origin. The legislature shall implement this section by appropriate legislation. (emphasis supplied).

It was and is the exclusive duty of the Michigan Supreme Court to prescribe practice and procedure from the Michigan Court Rules. *Mi Const 1963, Article 6, Sections 5 and 10; Abate v. PSC*, 173 Mich App 647, 658-659 (1988). If the Michigan Supreme court promulgates a rule which conflicts with a statute, the rule is followed. *Buscaino v. Rhodes*, 385 Mich 474, 479-480 (1971). Indeed, the promulgation of rules

of practice and procedure is a legislative activity. *Supreme Court of Virginia v. Consumers Union of the United States*, 100 S Ct 1967, 1975 (1980) [Virginia State's justices entitled to legislative immunity because the promulgation of a set of rules to govern the Virginia Bar is performed in a legislative capacity]. Thus a Court Rule, as any other item of legislation, is subject to constitutional scrutiny. *Fieger v. Ferry*, 471 F 3d 637, 646 and 651 (6th Cir 2006), *reh den en banc* April 18, 2007.

In the present case, Plaintiff was sanctioned with mediation appellate attorney's fees during a window of appeal on the issue then pending in the Michigan Appeals' court system. Specifically, on June 14, 2004, the Trial court awarded Defendant $43,268.75 [2] in mediation appellate attorney fees sanctions against Plaintiff - relying upon a Michigan Court of Appeals' decision rendered August 5, 2003 [*Haliw v. Sterling Heights*, 257 Mich App 689 (2003)], which was subsequently overruled by a unanimous Michigan Supreme Court on January 25, 2005 [*Haliw v. Sterling Heights*, 471 Mich 700, 711 (2005)]. During the time that Plaintiff initially rejected the proposed mediation award - the well-settled law in Michigan clearly and unequivocably provided that mediation sanctions for appellate attorney's fees was not allowed. *American Gas Co v. Costello*, 174 Mich App 1 (1989), and *Giannetti Bros Construction Co v. City of Pontiac*, 174 Mich App 442 (1989) - both of which were cited approvingly by the Michigan Supreme

---

[2] Plaintiff had challenged the excessiveness of the Defendant's appellate attorney's fees as being three (3) times normal in light of opposing expert testimony, but the Trial Court allowed all of the claimed fees - even though a substantial amount of time was spent by Appellee's attorney reading non-trial deposition transcripts.

Court in *Haliw, supra* at 710. Also, please see *Leavitt v. Monaco Coach Corp*, 241 Mich App 288, 312 n 4 (2000), and *Dean & Longhofer, Michigan Court Rules Practice*, Section 2403.22, p 533]. Indeed, it was the continued appeal of the disputed law by Plaintiffs in the *Haliw, supra* case, which ultimately overruled the aberrant court of Appeals' decision. That very case, that very authority, that very precedent upon which the Defendant relies upon to collect mediation sanction appellate attorney fees against the Plaintiff, is now illegal. It was a miscarriage of justice that the Trial Court failed to uniformly apply the law to the instant case. In fact, on appeal, both the Michigan Court of Appeals and Michigan Supreme Court, without comment, refused to disturb the Trial court's ruling. (Appendix C, D, & E).

Similarly situated parties have an equal right to be protected to the benefits of the law. *US Constitution, Amendment XIV;* and *MI Const 1963, Article 1, Section 2*. The United States Supreme court has consistently struck down as an unconstitutional denial of equal protection numerous laws which do not justify its classification: *Romer v. Evans*, 517 U.S. 620 (1996) [Colorado's Constitutional Amendment 2 which precludes all legislative, executive, or judicial action at any level of state or local government designed to protect the status of persons based on their "homosexual, lesbian or bisexual orientation, conduct, practices, or relationships" held as unconstitutionally violative of the Equal Protection Clause]; *Zobel v. Williams*, 457 U.S. 55 (1982) [Alaska's Constitutional Amendment which distributed tax dividend revenue based on a resident's length of domicile, held unconstitutional denial of equal protection. No valid state interests are rationally served by length of residence; such reasoning could open the door to state apportionment of other rights, benefits, and services according to length of residence, and would permit the states to

divide citizens into expanding numbers of permanent classes]; *Kirchberg v. Feenstra*, 450 U.S. 455 (1981) [Louisiana's community-property code allowing a husband to solely dispose of marital property without his wife's consent, held, unconstitutional denial of equal protection. Gender-based discrimination did not further an important governmental interest. Prospective enforcement of previously legitimate husband-only mortgage upon real property owned by wife is not enforceable]; *McCrary v. Indiana*, 364 U.S. 277 (1960) [Petitioner's pauper status and inability to pay for his criminal trial transcript for an appeal, held, unconstitutional denial of equal protection]; and *Hooper v. Bernalillo County Assessor*, 472 U.S. 612 (1985) [New Mexico's policy of providing a permanent tax exemption for Vietnam Veterans who had been state residents before May 8, 1976, but not to more recent arrivals, held, unconstitutional denial of equal protection].

Enforceability underlies the appropriateness of appellate review. In *Kirchberg*, *supra,* Petitioner-Wife's husband had previously mortgaged community (marital) real property without his wife's consent - as was allowed by the then Louisiana law. By the time the case had worked its way to the United States Supreme Court, Louisiana eliminated that law. However, the mortgage was yet being sought to be foreclosed. The United States Supreme Court found the then Louisiana law to be an unconstitutional denial of equal protection and declared that the reach of its decision squarely applied to the wife - regardless of whether the mortgage was 'legal' when initially executed. *Kirchberg, supra* at 462 - 463. Similarly, here, Petitioner is in the class of interimly sanctioned parties - which sanctions were not allowed prior to August 5, 2003, nor after January 25, 2005. There is no rational basis that justifies such an absurd result.

State courts should not be allowed to disregard issues of retroactivity in making substantive and or interpretive rulings of law. Such failings can create classes among citizens - which the first Justice Harlan admonished that the Constitution "neither knows nor tolerates classes among citizens." *Plessy v. Ferguson*, 163 U.S. 537, 559 (1896) (dissenting opinion).

There is no rational relationship to any governmental interest to classify Petitioner as a party who was sanctioned when such timing was legitimate - and when, both before and after, such sanctions are illegal. This is the procedural and substantive nightmare of which bad decisions create. Indeed, there is a current Maelstorm of litigation in Michigan dealing with issues of retroactivity. *Ward v. Siano*, 270 Mich App 584 (2006) [Decided April 13, 2006], *Ward v. Siano,* 269 Mich App 801 (2006) [Order entered May 8, 2006]; *Mullins v. St. Joseph Hospital*, 271 Mich App 503 (2006) [Decided July 11, 2006]; *Ward v. Siano*, 272 Mich App 715 (2006) [Decided November 24, 2006]; and *Ward v. Siano*, Michigan Supreme Court Docket No. 132797 (Mich 4-4-2007).

Certiorari is necessary to establish that, in order to avoid the creation of classes that would be denied equal protection of the law, judicial decisions which clarify legal interpretation without announcing a new rule of law or a change in existing law, unless specifically exempt in a written decision of the deciding court, shall be given full retroactive effect. *Cf - Bolt v. City of Lansing*, 238 Mich App 37, 44 - 45 (2000). A codification of this procedure would greatly streamline all pending and future decisions, and, at the same time, reserve unto the deciding court any special circumstances that the facts or law would require.

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully submitted,

ALEXANDER V. LYZOHUB
Counsel of Record for Petitioner
14700 Farmington Road, Suite 101
Livonia, MI 48154-5434
(734) 427-5555

May, 2007

STATE OF MICHIGAN

IN THE CIRCUIT COURT
FOR THE COUNTY OF MACOMB

Christopher Campbell,

Plaintiff,

Case No. 99-1348 CK
Hon. Diane M. Druzinski

vs.

Paul Sullins,

Defendant.
_____/

OPINION AND ORDER

Defendant Paul Sullins moved for an award of appellate costs and attorney fees under MCR 2.403(O). By way of brief background, Defendant accepted and Plaintiff rejected the case evaluation award. Following Plaintiff's loss at trial level, Judge Switalski ruled in an Opinion and Order dated July 24, 2002 Defendant was entitled to costs and attorney fees in the total amount of $32,380.50. Plaintiff then timely filed tow appeals in the Court of Appeals. On June 19, 2003 the trial courts rulings were affirmed. On November 24, 2003, an Application for Leave to Appeal to the Michigan Supreme Court was denied.

This court then ruled in its Opinion and Order dated March 28, 2004 that Defendant is also entitled to appellate costs and fees pursuant to MCR 2.403(O) and *Haliw v. City of*

Sterling Heights, 257 Mich App 689; 669 NW2d 563 (2003). Defense counsel David L. Smith submitted an invoice reflecting 247.25 hours spent at an hourly rate of $175.00 for attorney fees of $43,268.75. Costs were in the amount of $150.00 for a total invoice of $43,418.75. A hearing was held at Plaintiff's request on May 7, 2004 to determine the reasonableness of Defendant's costs and fees claimed per *Haverhill Farms Petterman v*, 125 Mich App 30 (1983).

In *Wood v. DAIIE*, 413 Mich 573; 321 NW 2d 653 (1982), our Supreme Court endorsed a non-exhaustive list of factors the trial court should consider when assessing the reasonableness of attorney fees. The include:

1. the professional standing and experience of the attorney;

2. The skill, time and labor involved;

3. The amount in question and the results received;

4. The difficulty of the case;

5. The expenses incurred;

6. The nature and length of the professional relationship with the client.

The trial court does not have to make detailed findings as to each specific factor. *Id.* at 588.

The court initially notes that it previously ruled $250.00 total, per hour, was reasonable for both defense counsel at the

trial court level. Mr. Helprin's hourly rate was $140.00 for trial work and Mr. Smith's hourly rate was $110.00 for trial work.

The court will now examine the *Wood* factors in determining the reasonableness of defense counsel Smith's attorney fees.

The professional standing and experience of the attorney. Mr. Smith testified that he has been an attorney for 14 years and in solo practice for the last 10 -11 years. Defense counsel further testified he has a significant automotive background which was necessary to effectively represent his client. Following trial of this matter, Mr. Smith agreed to single-handedly represent Defendant in the appellate process with plaintiff having filed 2 claims of appeal, one on the merits of the case, and one regarding award of case evaluation sanctions. Defense counsel candidly admits this was his first case before the Court of Appeals. Defense counsel charged $175.00 per hour for his services. Plaintiff presented expert testimony from Ms. Nannet Korpi, and appellate attorney, who opined that the reasonable rate for such services would be $110.00 per hour. This is presumably based on this court's prior ruling, although Ms. Korpi would quote a rate of $100.00 per hour. The Court does note that the State Bar of Michigan 2003 Economics of Law Practice study indicates the median hourly billing rate for attorneys in the state is $170.00. The Court is satisfied that defense counsels hourly rate of $175.00 is reasonable when considering the combination of legal experience, automotive experience and solo handling of the 2 appeals arising out of this litigation.

The skill, time and labor involved. The first appeal arising out of this case involved the merits of the case. The second appeal involved the award of case evaluation sanctions. Both appeals required extensive responsive briefs and resulted

in the published opinion, *Campbell v. Sullins*, 257 Mich App 179 (2003). Plaintiff's expert believed the issues on appeal were not complex, contrary to Plaintiff's prior arguments that this was a case of "first impression." Plaintiff's expert also testified that defense counsel spent excessive amount os fo time on certain tasks, that had defense counsel had available to him and utilized computer research this would have reduced the number of hours spent, and also that time spent meeting with the client was excessive. Plaintiff's believe 99.5 hours were reasonable.

On the contrary, defense counsel testified that it was essential to spend a lot of time with the client to make sure the client knew that this was counsel's first appeal, that counsel researched at the law library downtown all aspects of the case law, statutes and legislative history of several states he felt applicable to the matter, and necessary for his responsive brief. Defense counsel also extensively reviewed documents in the underlying matter in preparation of his responsive briefs. Both counsel agree the documents in this matter fill 3 - 4 boxes. Defense counsel billed for 247.25 hours.

The court is not persuaded 247.25 hours is unreasonable. Certainly the benefit of familiarity with the appeal process and the availability of access to computer research may have reduced the amount of time spent by counsel, but those factors do not automatically justify a reduction in the amount of time spent. The realities of the situation are that an experienced appellate attorney may only spend approximately half the amount of time n appeal as compared to an inexperienced attorney, without the financial resources for computer research, who is preparing 2 responsive briefs on admittedly complex issues. Conversely, an experienced appellate attorney likely would have spent time becoming familiar with the subject matter of the underlying

case, in order to effectively prepare appellate documents.

The amount in question and the results achieved, the difficulty of the case, and expenses involved. The amount in question, should Plaintiff prevail on appeal may well have been in excess of $100,000, considering the costs of the original trial, a new trial, and potential damages should defendant loose the second trial. The results achieved are clear. Defense counsel has prevailed at the trial court level and the court of appeals. Plaintiff's application for leave to the Supreme Court was denied. Neither defense counsel's hourly rate nor length of time spent is unreasonable when evaluating these factors. In addition, the complexity of the case on its subject/legal merits, as well as plaintiff's aggressive pursuit of this matter justify the time spent, as well as the costs in the amount of $150.00.

The nature and length of the professional relationship with the client. Defense counsel had significant automotive knowledge which was required to effectively represent Mr. Sullins in this matter. Mr. Sullins met and knew the defense counsel from the car clubs to which they both belonged. Their relationship has now spanned almost 5 years.

Conclusion

For the reasons set forth above, the court is satisfied defense counsel Smith's appellate costs of $150.00 and attorney fee of $43,268.75, for total appellate costs of $43,418.75, is reasonable and is therefore GRANTING defendant's request for appellate costs per MCR 2.403(O). Further, to the extent Plaintiff has not paid the case evaluation sanctions per this court's Order of July 24, 2002 in the amount of $32,380.50, that sum shall be paid to defense counsel also. Pursuant to MCR 2.602(A)(3) the Court states this Opinion and

Order resolves the last claim and closes the case.

IT IS SO ORDERED.

Diane M. Druzinski
Macomb County Circuit Court Judge

DIANE M. DRUZINSKI
CIRCUIT JUDGE

JUNE 14, 2004

A TRUE COPY
CARMELLA SABAUGH, COUNTY CLERK

BY: s/ A. Ceaurset Court Clerk

Dated: June 14, 2004

cc: Alexander Lyzohub, Attorney at Law
David L. Smith, Attorney at Law
Richard Halprin, Attorney at Law

STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

CHRISTOPHER J. CAMPBELL,

Plaintiff,

v. Case no. 1999-1348 CK

PAUL SULLINS,

Defendant

_____/

OPINION AND ORDER

Plaintiff Christopher J. Campbell moves for relief from judgment under MCR 2.612 (C).

I. BACKGROUND

The factual and procedural backgrounds of this matter are set forth in *Campbell v. Sullins*, 257 Mich App 179, 182-185; 667 NW2d 887 (2003), which affirmed in all aspects.

Plaintiff now moves for relief from judgment

II. STANDARD OF REVIEW

Relief from a judgment under MCR 2.612 (C) is discretionary. In exercising its discretion, a court must balance

the public interest in achieving finality in litigation versus the private interest of remedying an injustice. *Mikedis v Perfection Heat Treating Co,* 180 Mich App 189, 203; 446 NW 2d 648 (1989).

III. ANALYSIS

As a preliminary matter, plaintiff's reliance on *Curtis v. City of Flint*, 253 Mich App 555; 655 NW2d 791 (2002) and *Bolt v. City of Lansing (On Remand)*, 238 Mich App 37; NW2d (1999) is misplaced; this case was closed at the time *Haliw v. City of Sterling Heights*, 471 Mich 700; 691 NW 2d 753 (2005) was decided. Moreover, *Haliw, supra*, established a new rule of law by reversing (i.e., changing) *Haliw v. City of Sterling Heights*, 257 Mich App 689, 669 NW 2d 563 (2003)[1] suggesting prospective application is warranted. *Curtis, supra* at 564-567, and *Bolt, supra* at 44-49.

Indeed, in *Sumner v. General Motors Corp (On Remand)*, 245 Mich App 653, 667-668; 633 NW 2d 1 (2001), the court stated:

> An intervening change in law is not an appropriate basis for granting relief from a judgment; indeed, if it were "it is not clear why all judgments rendered on the basis of a particular interpretation of law should not be reopened when the interpretation is substantially changed." 2 Restatement

---

[1] Contrary to Plaintiff's contention, the Court of Appeals decision in *Haliw, supra*, was final, binding and correct when the *Opinion and Order* dated June 14, 2004 and the *Opinion and Order* dated March 18, 2004 were entered.

Judgments, 2d, Section 73, illustration 4, p. 200"[9]

> Thus while requiring a new trial in this case does seem unsatisfactory at first blush, we would open a Pandora's box if we allowed a party to avoid a judgment of this Court by arguing in the trial court that the legal basis for that judgment had been eviscerated. [Footnote omitted.] * * * Although the particular facts of this case may lead to a counterintuitive result, we nonetheless resist the temptation to use bad facts to make bad law. See *In re Contempt of Auto Club Ins Ass'n*, 243 Mich App 697, 722; 624 NW2d 443 (2000).

---

[9] MCR 2.612 (C)(10) is comparable to FR Civ P 60 (b), which has generally been applied by the federal courts as not providing relief from judgment on the basis of a change of law. See generally anno: *Construction and application of rule 60(b)(6) of federal rules of civil procedure authorizing relief from final judgment or order for "any other reason,"* 15 ALR Fed 193, Section 17, pp 265-268.

Plaintiff is seeking relief from judgment based on a change of law. Consequently, Plaintiff is not entitled to relief.

---

[2]

The *Opinion and Order* dated June 14, 2004 does not rely on a prior *judgment* that has been reversed or vacated. To the contrary, *Campbell, supra*, was affirmed! While the *Opinion and Order* dated

IV. CONCLUSION

For the reasons set forth above, plaintiff Christopher J. Campbell's motion for relief from judgment is DENIED under MCR 2.612(C.

This matter remains closed. MCR 2.602(A)(3).

IT IS SO ORDERED.

Diane M. Druzinski, Circuit Court Judge

Dated: October 13, 2005

DMD/aac

cc: Alexander V. Lyzohub, Attorney at Law
David Smith, Attorney at Law

June 14, 2004 is based on *law* that has subsequently been reversed, the *Sumner* Court clearly held this was an insufficient basis on which to grant relief from judgment. Plaintiff's interpretation would result in interminable litigation any time a rule of law is changed (no matter how slight).

DIANE M. DRUZINSKI
CIRCUIT JUDGE

OCTOBER 18, 2005

A TRUE COPY
CARMELLA SABAUGH, COUNTY CLERK
BY: s/ A. FRAURT Court Clerk

Court of Appeals, State of Michigan

ORDER

Christopher J Campbell v. Paul Sullins

Docket No. 266305

LC No. 1999-001348-CK

Kathleen Jansen
Presiding Judge

Henry William Saad

Pat M. Donofrio
Judges

The Court orders that the application for leave to appeal is DENIED for lack of merit in the grounds presented.

Court of Appeals of
The State of Michigan

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

MAY 26, 2006

s/ SANDRA SCHULTZ MENGEL
Chief Clerk

ORDER

Michigan Supreme Court
Lansing, Michigan

October 31, 2006

SC: 131592
COA: 266305
Macomb CC: 1999-001348 CK

CHRISTOPHER J. CAMPBELL,
Plaintiff-Appellant,

v.

PAUL SULLINS,
Defendant-Appellee.
_____/

On order of the Court, the application for leave to appeal the May 26, 2006 order of the Court of Appeals is considered, and is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

Seal of the Michigan Supreme Court Lansing

"I Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that this foregoing is a true and complete copy of the order entered at the direction of this Court.

October 31, 2006 s/ CORBIN R. DAVIS
Clerk

ORDER

Michigan Supreme Court
Lansing, Michigan

February 27, 2007

SC: 131592
COA: 266305
Macomb CC: 1999-001348 CK

CHRISTOPHER J. CAMPBELL,
Plaintiff-Appellant,

v.

PAUL SULLINS,
Defendant-Appellee.

_____/

On order of the Court, the motion for reconsideration of this Court's October 31, 2006 order is considered, and it is DENIED, because it does not appear that the order was entered erroneously.

Seal of the Michigan Supreme Court Lansing

"I Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that this foregoing is a true and complete copy of the order entered at the direction of this Court.

February 27, 2007 s/ CORBIN R. DAVIS
Clerk